



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 10.04.2023

Pronounced on: 30.05.2023

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RFA(OS) 3/2019 & CM APPL. 1031/2019

INDIA SKILLS PVT. LTD.

501, Empire Apartments,
98, M.G. Road, Sultanpur,
New Delhi-110030

..... Appellant

Through: Mr. Tahir Ashraf Siddiqui,
Advocate with Ms. Swechha
Chhetri, Legal Executive.

versus

1 NEERAJ KUMAR PATHAK

S/o Satya Dev Pathak,
Resident of House No. 65,
Khanpur Village, Near Chaupal,
Khanpur Village, New Delhi-62

2 MANOJ KUMAR

S/o Late Bhabhuti,
R/o House No. 65,
Village Khanpur,
New Delhi

..... Respondents

Through: Mr. Hemant Manjani & Ms. Sakshi
Garg, Advocates.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J



1. The present appeal has been preferred against the judgment dated 29.10.2018 vide which the suit of the appellant/plaintiff for damages in the sum of Rs.3 crores on account of loss of reputation, has been dismissed.

2. The **facts in brief** are that the appellant is a Company engaged in the business of providing innovative Human Resource Assessment Solutions for the last seven years and has generated considerable goodwill and reputation as one of the best Human Resource Assessment Solutions provider in India. It has a strong client base which includes the following:

- (a) *National Skill Development Corporation;*
- (b) *Retailer Association Skill Council of India;*
- (c) *Security Sector Skills Development Council;*
- (d) *Automotive Skills Development Council;*
- (e) *Skills Council for Mining Sector;*
- (f) *Textile Skill Development Council;*
- (g) *Directorate General of Employment and Training.*

3. The respondents were engaged initially as coordinators for the appellant Company. However, on the request of the appellant, Memorandums of Understanding (MoU) dated 12.03.2015 & 07.08.2015 were executed with respondent No.1 & 2 individually. The respondents were responsible for certification of assessors and their training on proper Assessment Procedure, as per the guidelines laid down by the appellant. While respondent No.1 was appointed as a coordinator to conduct assessment within the State as well as outside the State as and when directed by the appellant Company, respondent No.2 was appointed as the coordinator exclusively for the State of Uttar Pradesh.



4. The initial period of MOU was one year. Initially the respondents worked to the satisfaction of the appellant Company, but later the quality of their work deteriorated. Upon being reprimanded about their negligence, respondent No.1 sought an apology by writing a letter to Shri Jasjit Singh Ahluwalia, Manager of the appellant Company vide emails dated 08.07.2016, Ex PW1/4.

5. As per clause 2(q) of the MOU, it was agreed that the Assessment Fee will be paid to the respondents within 30 days of the payment advice received by the appellant Company from its principal clients. It was the duty of the respondents to do regular payment follow-up with the concerned authorities for its timely collection and release in favour of the appellant company.

6. It was claimed that the defendants/respondents herein, instead of working bonafidely and professionally for the appellant Company, started following heinous and leviticus activities of defaming the appellant Company in the market by tarnishing their reputation and goodwill not only amongst its clients but also the employees. The respondent No.1 wrote an email dated 16.07.2016, Ex PW1/5 addressed to Chairman, National Skill Development Corporation of India making false and baseless allegations against the appellant Company and marked it to all the other clients.

7. It was claimed that respondent No.1 had deliberately sent defamatory emails to various bodies with the sole objective to tarnish the image of the appellant Company and to defame them in the market which has caused substantial damage to the business, name and reputation of the appellant. The aforesaid email elicited averments which were completely



outrageous, egregiously false, wholly indefensible slander and had inflicted grave, incalculable and irreparable damage to the reputation, character and credibility of the appellant Company.

8. It was claimed that because of these malicious emails sent by respondent No.1, some of the clients decided not to award further projects to the appellant Company. The appellant was constrained to file a suit for permanent and mandatory injunction against respondent No.1 for restraining him from sending any emails wherein an interim injunction was granted for the same. However, respondent No.2 joined hands with respondent No.1 in continuing to send the emails.

9. The appellant has suffered financial loss to the tune of Rs.6,98,05,770/- and has suffered loss of reputation and has thus filed the Suit for damages in the sum of Rs.3 Crores; an apology from the respondents and also costs of the suit.

10. The **respondent No.1** did not appear despite service and also did not file the Written Statement and his right to file the Written Statement was closed and **he was proceeded ex-parte vide Order dated 03.03.2017.**

11. The **respondent No.2 appeared** but did not file the Written Statement and his right to file the Written Statement was also closed vide Order dated 29.05.2017.

12. Subsequently, the two respondents appeared through learned Counsel who sought time to move an application for getting the ex-parte order set aside, but preferred a Chamber Appeal against the closure of the right to file the Written Statement, which was dismissed vide Order dated 27.11.2017.



13. The appellant examined **PW1** Shri Vibhas Kumar Vice President of the appellant Company, **PW2** Shri Dinesh Vashistha Ex-Vice President of the appellant Company and **PW3** Mr. Pawanjeet Singh Ahluwalia Director of the appellant Company, who tendered their evidence by way of their respective affidavit Ex.PW1/A, Ex.PW2/A and Ex.PW3/A.

14. The *learned Single Judge in the impugned judgment* made a reference to the email dated 16.07.2016, Ex.PW1/5 sent by respondent No.1 to the clients of the appellant informing that though initially the appellant had made the payments, but thereafter has gone slow in making payments and there is an outstanding amount of Rs.15 lakhs and the officers of the appellant are asking for a kickback to clear the same. Reference was also made to the photoshot of respondent No.1's Facebook wall on 10.08.2016, Ex.PW1/17, wherein he had stated that appellant Company is a fraud Company and unprofessional as it did not make payments to its assessor's and cautioned others from dealing with the appellant.

15. A specific query was put to the Appellant by the learned Single Judge and it was observed that the appellant was not able to show any evidence led by the plaintiff/appellant herein to the effect that on the said date the amounts claimed by the respondents were not due from the appellant. In fact, there was not even a whisper that the statements made by the respondents were false or defamatory. It was thus concluded that the appellant has not been able to prove that any defamatory statements had been made against it and *the suit was dismissed*.

16. Aggrieved by the said judgment, the present appeal has been



preferred.

17. **Ld counsel for the Appellant has submitted** that the main counsel for the appellant did not get sufficient opportunity to address the arguments and the impugned judgment has been made without giving a fair hearing to the appellant. It is submitted that despite the witnesses categorically stating in their evidence that the statements made by the respondents were defamatory and false, the learned Single Judge has erroneously come to the conclusion that the plaintiff/appellant herein failed to show that the statements made by the respondents were defamatory or false.

18. It is further argued that the documentary evidence of the appellant has not been considered that there were no dues owed from the appellant to the respondents. By adverting to the terms in clauses 2 (q) and 2(r) of the MOU, Ex PW1/2 it was contended that the money was to be paid to the respondents only after the amounts were credited by the clients in the account of the appellant. It was incumbent upon the respondent to pursue the clients to get the money in terms of the Agreement. It is they who failed in their duty and have wrongly implicated the appellant. It is further argued that in fact, the respondents had no outstanding claim and it is for this reason that they have not filed any suit for recovery against the appellant till date.

19. Furthermore, the defamatory email dated 16.07.16, Ex.PW1/5 that was sent by respondent No.1 to its various clients, resulted in loss of business to the appellant and de-affiliation by its various clients. The respondents in fact, were initially vigilant but they started slacking and became negligent and their work quality deteriorated and Respondent



No.1 even sought an apology from the appellant Company when they were reprimanded for the same.

20. Moreover, the respondents had no defence for which reason neither did they file any written statement nor did they cross-examine the witnesses. The appellant's suit has been wrongly dismissed when it should have been decreed as prayed in the plaint.

21. **Learned counsel on behalf of the respondents has argued** that there was no defamatory statement made since the claims made to the appellant were outstanding, and he had merely sought the amount due through the impugned emails. There was no false statement made by the respondents and, therefore, no defamatory case was made out. The suit has been rightly dismissed.

22. **Submissions heard.**

23. The case of the appellant is that the alleged defamatory emails dated 16.07.2016, Ex.PW1/5 which were written by respondent No.1 and respondent No.2 to the Chairman of National Skill Development Corporation of India with a CC to all the clients and the posts on their Facebook wall, has resulted in their defamation, loss of reputation and loss of business account of many clients.

24. To comprehend and understand the contentions of the appellant, it would be first significant to understand the concept of "defamation" and "reputation".

Meaning of the term "Defamation"

25. According to **Chambers Twentieth Century Dictionary**, Defamation means to take away or destroy the good fame or reputation; to speak evil or; to charge falsely or to asperse.



26. **Salmond & Heuston** on the Law of Torts, 20th Edn.⁷ define a defamatory statement as under:-

“A defamatory statement is one which has a tendency to injure the reputation of the person to whom it refers; which tends, that is to say, to lower him in the estimation of right thinking members of society generally and in particular to cause him to be regarded with feelings of hatred, contempt, ridicule, fear, dislike, or disesteem. The statement is judged by the standard of any ordinary, right thinking member of society...”

27. **Halsburys Laws of England**, Fourth Edition, Vol.28, defines a ‘defamatory statement’ as under:-

“A defamatory statement is a statement which tends to lower a person in the estimation of right thinking members of the society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule, or to convey an imputation on him disparaging or injurious to him in his office, profession, calling trade or business.”

28. **Justice Cave** in the case of Scott vs. Sampson QBD1882 defined it as a “false statement about a man to his discredit.” The same was applied in the judgements in Bata India Ltd. vs. A.M. Turaz & Ors. 2013 (53) PTC 586; Pandey Surindra Nath Sinha vs. Bageshwari Pd. AIR 1961 Pat. 164 (1882) QBD 491.

The concept of “Reputation”

29. Having dealt with “defamation”, the intrinsic facets of “reputation” and what constitutes reputation may be considered. In Manisha Koirala vs. Shashi Lal Nair & Ors., 2003 (2) Bom CR 136, it was held that



allusions would clearly exposit the innate universal value of “reputation” and how it is a cherished constituent of life and not limited or restricted by time. The description may be different, but the crucial base is the same.

30. **William Hazlitt** explained the concept of reputation thus:-

“A man’s reputation is not in his own keeping, but lies at the mercy of the profligacy of others. Calumny requires no proof. The throwing out of malicious imputations against any character leaves a stain, which no after-refutation can wipe out. To create an unfavourable impression, it is not necessary that certain things should be true, but that they have been said. The imagination is of so delicate a texture that even words wound it.”

31. **Lord Denning** succinctly explained the distinction between character and reputation in Plato Films Ltd. vs. Spiedel (1961) 1 All. E.R. 876 as under :

“A man’s “character”, it is sometimes said, is what he is fact is, whereas his “reputation” is what other people think he is. If this be the sense in which you are using the words, then a libel action is concerned only with a man’s reputation, that is, with what people think of him: and it is for damage to his reputation, that is, to his esteem in the eyes of others, that he can sue, and not for damage to this own personality or disposition.”

32. In Om Prakash Chautala vs. Kanwar Bhan and others (2014) 5 SCC 417 Hon’ble Supreme Court held that reputation is fundamentally a glorious amalgam and unification of virtues which makes a man feel proud of his ancestry and satisfies him to bequeath it as a part of



inheritance for posterity. It is a nobility in itself for which a conscientious man would never barter it with all the tea of China or for that matter all the pearls of the sea. When reputation is hurt, a man is half-dead. It is an honour which deserves to be equally preserved by the downtrodden and the privileged. No one would like to have his reputation dented, and it is perceived as an honour rather than popularity.

33. In Vishwanath Agrawal vs. Saral Vishwanath Agrawal (2012) 7 SCC 288, the Apex Court observed that reputation which is not only the sale of life, but also the purest treasure and the most precious perfume of life. It is a revenue generator for the present as well as for the posterity.

34. In Umesh Kumar vs. State of Andhra Pradesh and Anr. (2013) 10 SCC 591, the Supreme Court observed that good reputation is an element of personal security and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property and as such it has been held to be a necessary element in regard to right to life of a citizen under Article 21 of the Constitution.

35. In Jeffrey J. Diermeier and Anr. Vs. State of West Bengal and Anr. (2010) 6 SCC 243, while deliberating on the aspect as to what constitutes defamation under Section 499 of Indian Penal Code, 1860 the court held that there must be an imputation and such imputation must have been made with the intention of harming or knowing or having reason to believe that it will harm the reputation of the person about whom it is made.

36. **Carter-Ruck on Libel and Slander, Fifth Edition** have carved out some of the tests as under:-

“(1) a statement concerning any person which



exposes him to hatred, ridicule, or contempt, or which causes him to be shunned or avoided, or which has a tendency to injure him in his office, professional or trade.

(2) a false statement about a man to his discredit.

(3) would the words tend to lower the plaintiff in the estimation of right thinking members of society generally?"

Defamation:

37. In essence, the offence of defamation is the harm caused to the reputation of a person. It would be sufficient to show that the accused intended or knew or had reason to believe that the imputation made by him would harm the reputation of the complainant, irrespective of whether the complainant actually suffered directly or indirectly from the imputation alleged. To sum up, any statement which has a tendency to injure the reputation of the person or lower him in the estimation of members of the society is defamatory and results in loss of reputation.

38. In Ram Jethmalani vs. Subramaniam Swamy, 126 (2006) DLT 535 while defining defamation as public communication which tends to injure the reputation of another, the Court explained *the defences of truth, fair comment and privilege available in a suit for defamation*. It states as under :

“Traditional defences to an action for defamation have now become fairly crystallized and can be compartmentalized in 3 compartments: truth, fair comment and privilege. Truth, or justification, is a complete defence. The standard of proof of truth is not absolute but is limited to establishing that what was spoken was ‘substantially correct’. Fair comment offers protection for the expression of



opinions. Standard of proof is not that the Court has to agree with the opinion, but is limited to determine whether the views could honestly have been held by a fair-minded person on facts known at the time. Unlike defence of truth, defence based on fair comment can be defeated if the plaintiff proves that the defamer acted with malice. Similar is the situation where the defence is of qualified privilege. Privilege is designed to protect expression made for the public good. Protection of qualified privilege is lost if actual malice is established. In public interest, absolute privilege is a complete defence. Rationale of absolute privilege being restricted to Court proceedings or proceedings before Tribunals which have all the trappings of a Civil Court and Parliamentary proceedings is that if threat of defamation suits loom large over the heads of lawyers, litigants, witnesses, Judges and Parliamentarians it would prohibit them from speaking freely and public interest would suffer.”

39. In the present case it is thus, needed to be examined whether the respondents transgressed their right to agitate their claims in exchange of emails with the appellant and with its clients. The first email which is claimed to be defamatory and addressed to all the clients is dated 16.07.2016 Ex.PW1/5 which reads as under :

*“Respected all legal Authority,
Myself Neeraj Pathak H.No.-65, Khanpur Village,
New Delhi-110062, working as State Coordinator
with India Skills Pvt. Ltd. Company Present Address
is Suit #501, The Empire Apartments, 98 MG Road,
Sultanpur, New Delhi-110032.*

*I have joined as coordinator in India Skills Pvt. Ltd.
in March 2014 as Assessment State Coordinator. I
have worked approx 2 crore business for India Skills*



Pvt. Ltd. from 2014 to till date. You can check tracker of business.

I provide qualified manpower as assessor for India Skills Pvt. Ltd. as State coordinator. Till Nov. 2015 India Skills company was providing payment on regular basis. But after that company pay me amount very slowly. My balance amount is above 15 lac still pending. When I talk to my payment with company account manager Mr. Jyoti Ranjan and business development manager Mr. Gaurav Kumar they asked me for some %. When I denied to pay them any types of %, then they are ignoring me now. When I told all matter to Company CMD, he is also not hearing my problems. He appointed a VP name Dinesh Basist Mobile number 9871008025. When I tried to talk with company VP, he told me that payment will come then we will provide you. Sir when I asked him for kindly show me your payment tracker then he is also not replying positively.

Sir as per attached tracker I have provided assessors to India Skills for Govt. projects i.e. Sector Skills Council who managed by Pradhan Mantri Kaushal Vikas Yojna. I have worked for Security Sector Skill Council, Retail Sector Skill Council, Textile, Automobile, Telecom, Uttar Pradesh Kaushal Vikas Yojna and others projects DDUGKY, UP SUDA, NULM, DGET etc.

Now before some days some assessors have created pressure at me then I told to CMD Mr. Jasjeet Ahuwalia Mo no.9650470000 Son of (Pawanjeet Singh Ahuwalia Director of Premiere shield Pvt. Ltd. Mobile number 9958694200), he has denied to pay and also warned me that Mr. Neeraj you do not know me I have 10k people like you. Sir now my position is like do or die.



Sir Most humbly and respectfully I beg to say that I have to paid payment to our assessors but India Skills Pvt. Ltd. is not paying me my payment and neither he is ready to show me his payment tracker. Company CMD is warning me.

So I am requesting you kindly see this matter on your end and provide me solution asap.

Waiting for a positive response.

Thank & Regards

Neeraj Kumar Pathak

9555552356”

40. The respondents have asserted as was noticed by the learned Single Judge, that an outstanding amount of Rs.15 lakhs was claimed from the appellant.

41. Further, the appellant has relied on the text messages exchanged between respondent No.1 and Pawanjeet Singh Ahluwalia, PW-3 on 10.08.2016, which are reproduced in the affidavit of evidence as under:

“Respondent No.1:

Dear Sir,

Now I am resending mail to NSDC Grievance Cell and SSC about cheating of India's Skill Team.

Please don't ask why I am doing this because we did not get any response from your team. So sorry for this.

Regards,

Neeraj Pathak

Replied by CMD :

Are you threatening me?

Respondent No.1:

From last 6 months your India Skills Team is making me fool so I am asking you what to do???



There is no any option for me. So I am asking to you what to do? I am not begging sir..... I am demanding my money so I will do all those things which are bad also for me and India Skills.

CMD :

I am out of Delhi. Meet me next week Tuesday in Okhla. We can fix time to meet on 16th morning.

Respondent No.1 :

Sir I need 5 Lakhs immediately as per Vibhas committed by today because I have also committed ahead. Then I will meet with you. You can ask with India Skills Teams. My balance amount is approximately Rs.12-13 Lakhs.”

CMD :

I am travelling and can only help after Tuesday next week.

Respondent No.1:

No problem Sir, you are travelling I can understand but account department is not travelling. I am observing that you are big people so you are talking like this. No issues I can tell that really you don't want to pay. Your intention shows clearly. India Skills Pvt. Ltd. is a fraud company..... They are truly and professional in their way of working and dealing with their associates. They don't even pay their assessor's payment so I request all of u guys to just crosscheck before working with them. The management there always makes false commitments... so please beware from India Skills Pvt. Ltd.

Please share it maximum.

I am spreading now this message.

Sorry Sir.”



42. In this email as well, the demand has been made for outstanding amount.

43. The appellant has also relied on photoshots of the facebook wall of the respondent No.1 on 10.08.2016 Ex.PW1/17 and on 16.08.16 which is Ex.PW1/18. It reads as under :

*“Neeraj Pathak,
August 10 at 2:19 pm, New Delhi.
India Skills Pvt. Ltd. is a fraud company... They are truly unprofessional in their way of working and dealing with their associates. They don't even pay their assessor's payment so I request all of u guys to just crosscheck before working with them. The Management there always makes fall commitments.. So please beware from India Skills Pvt. Ltd.*

*Neeraj Pathak,
August 16 at 10:45 pm*

Complain copy of India Skills Pvt. Ltd.... This is an assessment agency working for DGET and NSDC... This company management is very poor and also making fraud. This company has cheated with more than 20 people like me. Beware from this company..... I want to request all of you kindly share more and more so that Govt of India could cancel company registration and make this company and company directors blacklisted immediately... Friend, Company director and management has not paid my money and also given me threatening... So I am posting this complain letter on social media. Kindly support me.”

44. From a comprehensive reading of the email dated 16.07.2016, Ex PW1/5 in the light of the subsequent text messages exchanged between respondent No.1 and PW-3, Pawanjeet Singh Ahluwalia, Director of India



Skills Ltd, it is evident that there were outstanding amounts due from the appellant Company for which the respondents had been agitating. The learned Single Judge has rightly observed that nowhere in the pleadings or in the evidence did the appellant or its witnesses state that the amounts were not due. The respondent's assertion of there being outstanding amounts which had not been paid by the appellant Company cannot be termed to be false or per se defamatory. As observed in the case of Ram Jethmalani (supra) truth and fair comment is the traditional defence to defamation.

45. The appellant has tried to fall back upon clause 2 (q) and 2(r) of the MOU to assert that it was the responsibility of the respondents to follow up with the clients to get the money released in favour of the appellant, so that the payments could be made to the respondents. There may have been an understanding that respondents shall also pursue with the clients, but that does not absolve the liability of the appellant to pay the outstanding dues. Despite being aggrieved with the findings of the learned Single Judge, the appellant has yet again not been able to show either from his pleadings or from its evidence that there were no dues owed from the appellant to the respondents.

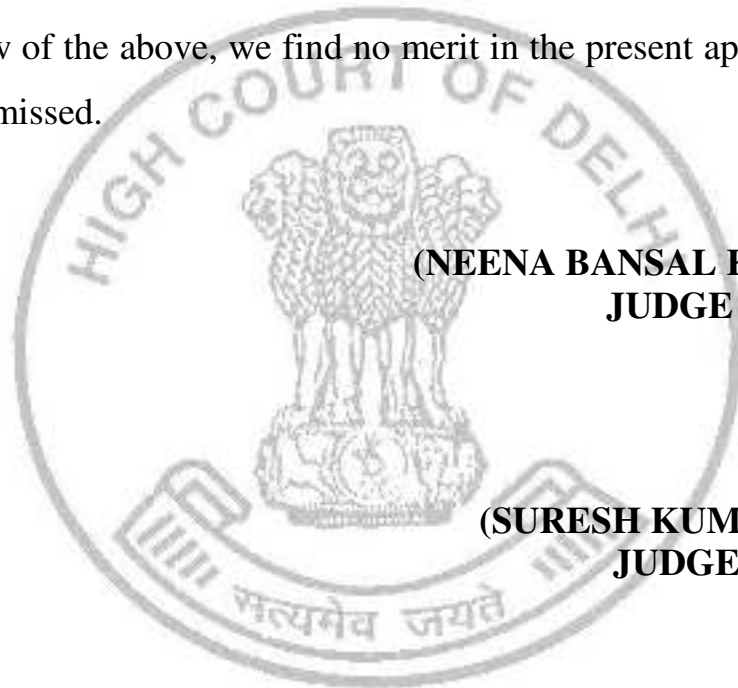
46. It may also be observed that appellant as per its own assertions had filed the suit for permanent injunction only against respondent No.1. The only averment against respondent No.2 is that he joined hands with respondent No.1, but has failed to explain any act of defamation by respondent No.2 or his connivance with respondent No.1.

47. It has been contended that neither the respondents had filed Written Statement nor cross-examined the witnesses and thus the onus of proving



that there were any outstanding amounts was on the respondents which has not been discharged. However, the burden of proving the case was initially on the appellant and only if it was able to discharge such initial burden, would the onus have shifted on the respondents. From the emails as reproduced above, there is no denial by the appellant that the amounts as claimed were not due and thus, it cannot be said that the claims of the respondents or the averments made by the respondents in the emails were false.

48. In view of the above, we find no merit in the present appeal, which is hereby dismissed.



(NEENA BANSAL KRISHNA)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

MAY 30, 2023
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